

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN

BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

MICHAEL W. LANDERS,

f/d/b/a ROSELAWN MEMORY GARDENS

RESPONDENT.

FINAL DECISION AND ORDER

95 RLC 006, 95 RLC 007

95 RLC 019, 95 RLC 024

96 RLC 005, 96 RLC 006 & 96 RLC 012

LS0005177RLC

The parties to this action for the purpose of Wis. Stat. sec. 227.53 are:

*Michael W. Landers
F/D/B/A Roselawn Memory Gardens
4954 State Rd. 50
Delavan, WI 53115*

*Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The state of Wisconsin, Department of Regulation and Licensing, having considered the Stipulation Agreement Annex-hereto of the parties, and resolution of the caption-matters, make the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Department, that the Stipulation Agreement annexed-hereto, filed by Complainant's attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the state of Wisconsin, Department of Regulation and Licensing.

Let a copy of this order be served on Respondent by certified mail.

Dated this 17th day of May, 2000.

Marlene Cummings

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST

MICHAEL W. LANDERS,	STIPULATION
f/d/b/a ROSELAWN MEMORY GARDENS :	95 RLC 006, 95 RLC 007
	95 RLC 019, 95 RLC 024
RESPONDENT.	96 RLC 005, 96 RLC 006 & 96 RLC 012

Respondent Michael W. Landers (LANDERS), f/d/b/a Roselawn Memory Gardens (Cemetery Authority), and Complainant’s Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement(s) for dispositions of the captioned-matters, stipulate and agree as follows:

- Respondent Landers, formerly of 3045 State Route 67, Lake Geneva, Wisconsin 53115, was at all time material to the complaints sole holder of all outstanding stock of, and d/b/a Roselawn Memory Gardens Cemetery Authority, and was registered as a cemetery salesperson under the provisions of subchapter VIII, chapter 440, Wis. Stats., since April 5, 1982, and was registered as a cemetery pre-need seller with the cemetery since December 16, 1991. Respondent’s present address is 4954 State Road 50, Delavin, WI 53115.
 - Both of Respondent’s registrations are presently expired (12/31/98) but he has rights of renewals, thusly, is still subject to the jurisdiction of the Department.
 - Roselawn Memory Gardens Association owned Cemetery Authority, Roselawn Memory Gardens Cemetery, and Roselawn Operations, Inc., which managed the cemetery, sold all of its outstanding stock to the Lowen Group International, Inc., on about June 11, 1998.
- This Stipulation shall be submitted to the Department of Regulation and Licensing (Department) for approval and disposition of the matters. If the terms of the Stipulation are not acceptable to the Department, then the parties shall not be bound by any of the provisions of the Stipulation.
 - This Stipulation is dispositive of Investigative Complaints #s 95 RLC 006, 95 RLC 07, 95 RLC 019, 95 RLC 024, 96 RLC 005, 96 RLC 006, and 96 RLC 012.
- Respondent has been advised of his right to public hearings on each and every allegation of the complaints, but hereby freely and voluntarily waives his right to hearings in these matters, on the condition that all provisions of this Stipulation be acceptable to and approved by the Department.

95 RLC 006

- Succinctly, the Department received this complaint against Respondent from a daughter of parents, who had bought and paid for two side-by-side crypts, #69 & 70, on about March 19, 1987, from Respondent.
- Complainant’s father passed away in 1989, and the family was informed by Respondent that the crypts purchased in 1987, had not yet been built, and that the father would be placed temporarily in the main building, but would be moved to his permanent resting place within a year.

6. Complainant's mother passed away on April 12, 1995, and Complainant's family was told that crypts #69 & 70, were still not available after six (6) years, and that the only available side-by-side spaces available were on an outside wall in a separate building.
7. Complainant's mother was buried there, with Respondent promising to move Complainant's father next to the mother within a week. Respondent informed the family that he did not have lettering to mark the mother's space, that lettering were on order, and promised to have the space lettered by Memorial Day.
8. The lettering was not done by Memorial Day, the father's space in the mausoleum could not be located, and Complainant's family questioned the whereabouts of their parents.
9. Respondent responded to the complaint in pertinent part that:

The deceased parents are entombed in side-by-side crypts #'s 91 and 92 level C. The mother was entombed on Friday April 7, 1995, in crypt #91, level C. The father was originally entombed (temporarily) in crypt #14, level C, and it was moved and retombed in crypt #92 level C on April 11, 1995.

... it has taken so long to fulfill Complainant's family is that the addition to our mausoleum is not finished yet. The problem will be totally resolved in the summer of 1997. When the new addition is finished. On a temporary basis, the crypt lettering will be finished as soon as warmer weather permits.

10. Ultimately, Complainant was directed in February 1999, to contact new owner, Lowen Group International Inc., who, pursuant to an agreement with the Department approving the sell of the cemetery to it, agreed to honor all existing contracts of the cemetery.

95 RLC 007

11. This complaint was referred from the Bureau of Director Licensing and Real Estate to the Division of Enforcement, relating to Cemetery Authority, Roselawn Memory Gardens' failure to file required Cemetery Authority Annual Reports for the periods of January 1, 1994 – December 31, 1994, and January 1, 1995 – December 31, 1995; and also related to expired Cemetery Authority, Landers, and his employees expired registrations.

a. Pursuant to an investigation into the complaint, it was determined that Respondent Landers, Roselawn Cemetery, and all of Respondents' employees' registrations had expired on about January 1, 1995, up until about March 18, 1996; and Respondent had not filed his required 1994-95, annual reports.

12. Respondent Landers and Roselawn Cemetery both renewed their expired registrations on about July 25, 1996, and submitted the delinquent annual reports and fees by check dated September 25, 1996.

95 RLC 019

13. Complainants filed the complaint alleging that in 1991, they purchased side-by-side crypts, #s 80 & 81 level B, in an annex which was to be constructed onto Respondent existing mausoleum. They paid cash. Complainants had been told in 1990, that Respondent would be building a new mausoleum, starting spring 1991.
14. Complainants, then residing in Texas, visited Wisconsin and the cemetery several times since 1991, and while Respondent had built a small portion of the annex, he had not built their specific sites.
15. Respondent indicated to Complainants in September 1994, when they saw him, that, construction would be starting on their site in the spring 1995. Respondent allegedly did not return their telephone calls, or respond to their written communications.
16. Respondent indicated to Complainants that if needed, there were available temporary space for them in his present facility.
17. Complainants have been directed in 1999, to new owner, Lowen Group International, Inc., who has agreed to honor all existing contracts of the cemetery, who indicated that the area of Complainants' Purchase (s), will be completed in May 1999.

95 RLC 024

18. Complainants/Spouses purchased side-by-side crypts from Respondent by contract dated April 21, 1987, at the terms of \$720.00 down payment and \$160.00 per month installment payments for eighteen (18) months for a total of \$3600.
19. Complainants paid the contract in full on November 2, 1988, and was informed by Respondent that, "at the

time the new addition is completed we will issue you a deed for the ... crypt".

20. Years went by and Complainant's never received any satisfactory answers regarding when their crypts would be built, and never received a deed for their purchases.

21. In 1995, Complainant's hired an Attorney who wrote Respondent a letter dated October 27, 1995, who indicated to Respondent that:

Since construction of this mausoleum crypt has not been commenced within three years after the date of sale as required by sec. 440.92(e)(2), Wis. Stats., Complainants now wish to void their purchase. Please refund their entire purchase price plus 5% interest per year as required by sec. 440.92(f), Stats.

22. Respondent never responded to the Attorney's letters, and Complainants filed a small claims court action against Respondent, filed February 8, 1996 in circuit court, Walworth County, for violation of sec. 440.92(e)(2), Wis. Stats.

a. Complainant received a judgement against Respondent in the amount of damages of \$3600, \$1080.00 interest and other court fees, for a total of \$4789.00.

96 RLC 005

23. This complaint is almost identical to complaint # 95 RLC 019 supra. Complainant filed this complaint against Respondent on behalf of her father, who had purchased companion crypts for himself and his wife on July 21, 1989, for the amount of \$3400.

24. Complainant's father made all payments as due, and in failing health in 1994, became concerned that the mausoleum still had not been built as promised.

25. The father personally visited Respondent who assured the father that there would be no problem and that the mausoleum would be built.

26. The father wanted his money back and hired an attorney in July 1994, to assist him. The attorney communicated with Respondent and arranged a final payment to Respondent, and Respondent would issue a deed to a temporary crypt until December, 1995, when the originally purchased mausoleum would be completed.

27. Respondent wrote Complainant's parent via a letter dated August 3, 1994, and indicated in pertinent part that:

This letter is to serve as an amendment to our purchase agreement, as we discussed the other day when you stopped out.

We have your new crypt location, #102, level D, and will issue you a deed for it upon final payment, with the understanding that when the entire addition is finished in December of 1995, your original selection will be honored.

28. Complainant's father died in February, 1996, and the family buried him in a different cemetery because the family did not want him in a temporary crypt for an "unknown length of time".

29. In March 1996, Complainant's Attorney sent two (2) letters to Respondent requesting the return of their money paid, but he did not respond.

30. Ultimately, Complainant filed a small claims court action against Respondent in the State of Wisconsin, circuit court, Walworth county, and received a total cost and judgement of \$4701.88, on about October 24, 1996.

96 RLC 006

31. Complainant complained that on about October 2, 1986, she and her husband purchased from Respondent two side-by-side crypts, #99 & 100 level E, and were informed that the crypts would be built the following spring; that they were continually told different things, but ten (10) years later, the mausoleum still had not been built.

a. Complainant had made their final payment to Respondent on about April 4, 1988, and was told "at the time the new addition is completed we will issue you a deed ... In the event of death prior to completion of the new building, temporary entombment will be provided in our existing building, at no charge."

32. Complainant's husband died on November 30, 1991, and was entombed in a temporary, unmarked crypt, up to

the time of filing this subject complaint on about June 26, 1996. She complained that she does not know the actual location of her husband.

a. Ultimately, new owners, Lowen Group International, Inc. resolved Complainant's problem to her satisfaction.

96 RLC 012

33. Complainant complained that her deceased father and "lady friend" had purchased side-by-side crypts from Respondent by contract dated January 25, 1991; that on September 1, 1995, she attempted to contact Respondent to get information regarding her father final resting place but no one could be reached and no one returned her telephone calls.

34. Her father died on September 11, 1995, and arrangements were made for the funeral arrangements through a funeral establishment, and on the day of the funeral, February 14, 1995, Complainant talked to a representative of Respondent who was apologetic about not talking to her prior to her father's death.

a. The crypts were paid for in full on September 11, 1995.

35. Respondent's representative informed Complainant that her father's crypt purchased in 1991 was not completed, that he did not know when construction of the new mausoleum would commence and showed her where purportedly, her father would be temporarily entombed.

36. Thereafter, on Saturday July 20, 1996, Complainant, her sister, and families drove from Chicago to visit their father crypt, but could not locate a crypt with their father's name on it. The cemetery office was closed, the door was chained, and there was no informational sign.

37. "After desperately trying to find the crypt, we left a note (and slipped it between the door) expressing our dismay and demanded that someone get in contact with us as soon as possible regarding the profuse negligence".

38. Complainant and her sister never heard from Respondent until after she had filed a complaint with the Department, on about September 9, 1996.

39. Investigator Willie Garrette made an unannounced stop at the cemetery on April 21, 1997, and talked to Respondent's secretary, who showed Garrette a building and pointed out that Complainant's father was in the second unmarked crypt on the bottom on the lower-left front of the building and provided related documentation to Garrette.

40. Respondent Landers personally indicated to Investigator Garrette that construction of the new mausoleum was scheduled to start on August 1, 1997, that in addition to Complainants' father's crypt not being marked, there were only about five (5) crypts that were not marked; and that he had been unable to mark them because the temperature had not been warm enough to use the silicone adhesive to hold the letters onto the faces of the crypts.

41. Ultimately, Complainant was directed to new owner, Lowen Group International, Inc., who had assured the Department that it would resolve all outstanding obligations of Respondents, pursuant to its purchase of the Cemetery Authority.

42. Pursuant to investigations of all of the above enumerated complaints, and meetings with Respondent Landers, he was directed to, and did relinquish any and all day to day operations of the cemetery, not to enter into any contracts with consumers, handle money and to come into compliance with all applicable laws, rules, and regulations, and to honor all contracts and make all consumers whole.

a. In July, 1997, Complainant's father, William Landers, assumed day to day operation of the Cemetery Authority, and begun to bring the cemetery into compliance with all applicable laws, rules and regulations; to honor all contracts and make all consumers whole.

43. Also, pursuant to investigations into the above-enumerated matters, audit(s) of Respondent Cemetery Authority financial affairs were undertaken, which documented many statutory and rule violations. See Exhibit "A", September 4, 1996, July 24, 1996, audit, Exhibit "B" in pertinent part, September 4, 1996, memo of Financial Reports Produced from July 24, 1996 audit; and Exhibit "C", September 19, 1996, memo of July 24, 1996, audit results

a. See Exhibit "D", September 26, 1996, memo re: a September 25, 1996, meeting of auditor Jeanne Pegelow and investigator Willie Garrette with William (Bill) Landers, Respondent's father, who had assumed day to day operation of the cemetery.

44. Based upon the above, Respondent W. Landers (Landers), f/d/b/a Roselawn Memory Gardens, Cemetery Authority, is deemed to have variously violated subchapter III, sec. 440.91, Stats., unregistered Cemetery

Authority, and cemetery salesperson; sec. 440.92, Stats., unregistered cemetery pre-need sellers; sec. 440.92(3), Stats., pre-need sellers shall deposit into a pre-need trust fund an amount equal to at least 40% of each payment of principal that is received from the sale of cemetery merchandise under a pre-need sales contract, which deposits are required on a monthly basis (At the time of the July 24, 1996, audit, Respondent had made no monthly deposits/withdraw AIS to/from the Pre-need trust account since October, 1993); violated sec. 440.92(6)(g), Stats., Reporting; Record Keeping. Failure to file an annual report with the Department. Pre-need sellers are required to prepare records that show for each deposit/withdrawal, the name of the purchaser ... on the pre-need sales contract, the amount and the item purchased (at the time of the 7/24/96 audit, there were no apparent records detailing what should be in the pre-need trust account; violated sec. 440.93(1)(b)-(c),(e),(g), Stats., (b) made substantial misrepresentations or false promises to individuals to influence the individuals to purchase cemetery lots, cemetery merchandise or mausoleum space, (c) engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly demonstrate a lack of knowledge or ability to apply professional principles or skills, (e) advertised in a manner that is false, deceptive or misleading, (g) violated subchapter 111 or any rule promulgated under it; violated sec. 440.92(2) 4.(e)2(f), Stats., ... A purchaser may void the pre-need sales contract if ... the construction of a mausoleum does not begin within 3 years after the date of the sale. If a pre-need sales contract is voided ... the pre-need seller shall, within 30 days after the date of the sales contract is voided, refund all money paid by the purchaser, together with interest calculated at the legal rate of interest as provided under sec.138.04.

a. Violated Sec. 445.125(1)(a), Stats., succinctly requires that all sales of outer burial containers not preplaced into the burial excavation of a grave, combination casket-outer burial container or other receptacle ... all payments made under the agreement shall be and remain trust funds until the occurrence of death or the internment of the container (Respondent was selling "Lawn crypts" before the vaults were placed into the ground. Mr. Landers could not provide to the Departments' auditor, evidence as to whose vaults had been installed, and indicated they are usually placed in the spring or fall of the year).

b. Violated sec. 157.11(9g)(c), Stats., any Cemetery Authority that sells a cemetery lot on or after November 1, 1991, shall deposit 15% of each payment of principal into a care fund ... within 30 days after the last day of the month in which the payment is received ... the total amount deposited must equal 15% of the total amount of all payments of principal that have been received, but not less than \$25.00 (the auditor noted that there had been no deposits to the perpetual care account since October, 1993. Mr. Landers seemed unaware of the law, and it may be that no deposits have ever been made for the 15% lot trusting); violated Sec. 157.12(3)(a),2, Stats., Care Fund For Mausoleums. Succinctly, an operator of a mausoleum shall deposit at least 25% of each payment of principal received from the sale of a mausoleum space into the care fund, until the care fund equal 25% of the cost of constructing the mausoleum ... the deposits shall be made ... within 30 days after the last day of the month in which the payment is received. (The auditor noted that, Mr. Lander indicated that they made a July 15, 1996, deposit to the trust account to cover the last couple of years, that they were only calculating the 25% care amount on mausoleum sales since November, 1991. This seemed incorrect, as the 25% care statute had been effective for many years); violated sec. 157.12(3)(b), Stats., succinctly, the cemetery treasurer shall file with the cemetery, a bond with sureties to indemnify the cemetery against loss if the treasurer shall fail to maintain the care fund. The cemetery/treasurer did not have a bond); violated sec. 157.62(1)(2), Stats. Reporting's Record Keeping: (1) failed to file annual reports for 1994 and 1995, with the state Department of Financial Institutions, and (b), with the Department of Regulation and Licensing, and violated secs. RL 50.02 and 50.05, Wis. Adm. Code, failure to file annual report with the Department and to file the annual report filing fee of \$40.00 per year for 1994-1995, ALL NOT INCLUSIVE.

45. Based upon the above and in settlement of these matters, Respondent Landers hereby consents, accepts and agrees to be suspended for a minimum of three (3) years and pay the amount of \$500 as part assessment of costs in resolving these matters; and is not to participate directly or indirectly, in the operation of any Cemetery Authority.

46. The \$500 part assessment of costs shall be payable by cashier's check or money order made payable to the Department of Regulation and Licensing, and shall be payable within six (6) months of the effective date of the Department's Final Decision and Order adopting the Stipulation Agreement, and submitted to Departmental Monitor:

Ted Nehring

Department's Monitor

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

47. If Respondent should petition the Department for Reinstatement/lifting of the suspension, he shall, among other things that may be required by the Department, demonstrate satisfactory rehabilitation and otherwise qualify for re-registration with the understanding that any such decision to reinstate/lift the suspension is solely within the discretion of the Department.

48. On or before the effective date of the Department's Order, Respondent is to submit to the Department's monitor, *supra*, any and all registrations/certificates previously issued to him, and Cemetery Authority, Roselawn Memory Gardens.

a. The Order is effective ten (10 days after signing by the secretary or her designee.

49. Respondent agrees that this Stipulation Agreement may be incorporated into the Department's Final Decision and Order adopting the Stipulation Agreement.

50. Respondent further agrees that Complainant's Attorney Sanders, and the case advisor(s) assigned to the complaints, may appear at any closed deliberative meeting of the Department with respect to the Stipulation, but those appearances are limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpo

Michael W. Landers,	May 9, 2000
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f/d/b/A Roselawn Memory Gardens	
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Respondent	Date
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Henry E. Sanders	May 15, 2000
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Complainant's Attorney	
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Division of Enforcement	Date
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